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CAPITAL SQUARE  
400 LOCUST STREET-SUITE 200  
DES MOINES, IA 50309-2350

In re Application of  
CATE et al.  
Application No.: 09/674,399  
PCT No.: PCT/US00/02028  
Int. Filing Date: 26 January 2000  
Priority Date: 05 April 1999  
Attorney Docket No.: P03958US1  
For: METHOD AND MEANS FOR FILLING  
NATURAL CASING SAUSAGE

DECISION

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GROUP 30

This notification is in response to applicants' "RESPONSE TO NOTIFICATION OF DEFECTIVE RESPONSE ABANDONMENT" filed 26 November 2002.

#### **BACKGROUND**

On 26 January 2000, applicants filed international application PCT/US00/02028, which claimed a priority date of 05 April 1999, and which designated the United States.

A Demand was not filed with the International Preliminary Examining Authority electing the United States prior to the expiration of 19 months from the priority date, and as a result the deadline for submission of a copy of the international application (unless previously communicated by the International Bureau) and payment of the basic national fee expired 20 months from the priority date, i.e. 05 December 2000.

On 31 October 2000, applicants filed a transmittal letter for entry in to the national stage in the United States which was accompanied by, *inter alia*, the basic national fee and the surcharge for late filing of the oath or declaration.

On 28 November 2000, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, an oath or declaration in compliance with 37 CFR 1.497 was required.

On 26 December 2000, applicants filed a "COMPLETION OF FILING REQUIREMENTS" which was accompanied by, *inter alia*, a declaration of the inventors.

On 22 June 2001, the DO/EO/US mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) and a NOTIFICATION OF A DEFECTIVE OATH OR DECLARATION (Form PCT/DO/EO/917) which indicated that the declaration filed 26 December 2000, was unacceptable in that it was "not signed by all inventors." The Form PCT/DO/EO/916 set a non-extendable response period of one month from the mail date of the Notification.

On 26 September 2001, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) which indicated that the application was held to be abandoned for failure to respond to the Form PCT/DO/EO/905.

On 29 October 2001, applicants filed a request to vacate the holding of abandonment on the grounds that a response to the Form PCT/DO/EO/905 was filed on 26 December 2000. This request was treated as a petition under 37 CFR 1.181.

On 18 December 2001, a decision was mailed granting applicants' petition under 37 CFR 1.181 and withdrawing the holding of abandonment mailed 26 September 2001. However, the decision also noted that the declaration filed 26 December 2000 was not sufficient. The decision noted that each declaration must be complete in and of itself, however, the declaration filed 26 December 2000 comprised a declaration which had been executed by all of the inventors except for inventor Ottow and the signature page of a second declaration which was executed by inventor Ottow as well as inventor Enklaar. The decision also indicated that applicants must submit either a single declaration executed by all of the inventors or in the alternative a complete copy of the declaration as executed by inventor Ottow.

On 03 January 2002, the DO/EO/US mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) which indicated that the declaration filed 26 December 2000 was unacceptable in that it was not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68. This NOTIFICATION OF DEFECTIVE RESPONSE set a non-extendable response period of one month from the mail date of the Notification.

On 19 February 2002, applicants submitted the instant "RESPONSE TO NOTIFICATION OF DEFECTIVE RESPONSE" which was accompanied by a declaration of inventors signed by inventor Ottow. (The response is accompanied by a Certificate of Mailing stating that it was mailed on 22 January 2002. The letter was received by the USPTO on 19 February 2002.)

On 12 August 2002, the USPTO mailed a decision indicating that the declaration filed 19 February 2002 failed to comply with 37 CFR 1.497(a)-(b) and that since applicant had not filed a proper reply within the time limit set forth in the NOTIFICATION OF DEFECTIVE RESPONSE mailed 03 January 2002, the application was abandoned as to the United States of America.

On 26 September 2002, the DO/EO/US mailed a NOTIFICATION OF DEFECTIVE RESPONSE ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned as to the United States of America.

On 26 November 2002, applicants submitted the instant "RESPONSE TO NOTIFICATION OF DEFECTIVE RESPONSE ABANDONMENT", which was accompanied by, *inter alia*, a "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)" and a declaration of inventors.

### **DISCUSSION**

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As to item (1), applicants submitted a declaration of inventors on 26 November 2002. This declaration complies with 37 CFR 1.497(a)-(b).

As to item (2), applicants submitted the petition fee for a small entity of \$640.00 on 26 November 2002.

With regard to item (3), the required statement has been made.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

### **CONCLUSION**

The petition under 37 CFR 1.137(b) is **GRANTED** for the reasons set forth above.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this

letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application including according the application a 35 U.S.C. 371(c) date of **26 November 2002**.



Daniel Stemmer

PCT Legal Examiner

PCT Legal Affairs

Office of Patent Cooperation Treaty

Legal Administration

Telephone: (703) 308-2066

Facsimile: (703) 308-6459